

Henny's Fork

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Gino Foianini</p> <p>RESPONDENT</p>	<p>CONTROL STRUCTURE NOTICE</p> <p>SEAA No. 1330 DISTRIBUTION ACCOUNT: 102864 WATER RIGHTS: 41-3481 et al.</p>
---	---

I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:

- (a) each location where water is diverted from a source; and*
- (b) any other location required by the state engineer.*

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

- (a) the measuring device; and*
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
- (b) commence enforcement proceedings authorized by Section 73-2-25.*

SCANNED TO SEAA

II. STATEMENT OF FACTS

1. The Respondent diverts water from Burnt Fork under water right 41-3481.
2. The respondent jointly shares the use of the ditch leading from the Thompson Creek drainage over to the Burnt Fork drainage that is also used to deliver some Hoop Lake storage water to downstream users below the Respondent's diversions.
3. Sometimes the commissioner has difficulties bypassing storage water past the Respondent's diversion structures along this ditch.
4. There are critical times when it is important that the commissioner be able to bypass storage water past Respondent's diversions on this ditch to the downstream water users receiving their storage water allocations. The control structures are not locked to enable the commissioner to bypass deliveries to downstream water users.
5. The commissioner measures and reports water deliveries to the downstream water users.

III. ACTIONS REQUIRED

1. Headgates along this ditch must be equipped with control gate locking mechanisms that enable the commissioner to lock them into a position that will enable him to bypass the correct amount of water that should flow to downstream water users. Usually a chain and padlock (with key access only by the commissioner) on the headgate control handle is sufficient to enable the commissioner to lock the bypassed flow as needed. Other methods may also be acceptable.
2. The locks would only be used when needed during the times when the commissioner needs to bypass water to downstream water users.
3. The Respondent must provide a key to the locking mechanisms on these headgates to the Henry's Fork Tributaries Water Commissioner and not other persons so the commissioner has control of the bypass flows as needed.
4. The work must be completed before July 1, 2010.

IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).

3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation."

V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert Leake
Regional Engineer
Vernal Office/Eastern Region
Utah Division of Water Rights
(435) 781-5327

Ben Anderson
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469

1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 21st day of September, 2009



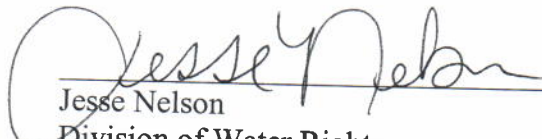
Ben L. Anderson, P.E.

Water Rights Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 21st day of September, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Gino Foianini
1248 CO RD 238
Lyman, WY 82937**



Jesse Nelson
Division of Water Rights
Field Services Secretary

cc: Robert Leake, Regional Engineer
Todd Covolo, Water Commissioner